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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/519,164

08/30/2005

Jerome Tauzin

LOM-43

5234

23599

7590

04/04/2008

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EXAMINER

AUDET, MAURY A

ART UNIT

PAPER NUMBER

1654

MAIL DATE

DELIVERY MODE

04/04/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/519,164	TAUZIN ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	MAURY AUDET	1654	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 19 April 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 7-14 is/are pending in the application.
- 4a) Of the above claim(s) 8, 13 and 14 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 7 and 9-12 is/are rejected.
- 7) ☒ Claim(s) 7 and 9-12 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 December 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

As noted previously, the present application has been transferred from former Examiner Young to the present Examiner.

Applicant's filing of a Notice of Appeal is acknowledged. The present action is being sent NON-FINAL, to properly address that the elected invention was actually a fraction comprising SEQ ID NOS: 5, and 8-10, as this Examiner misinterpreted the previous Examiner's rejoinder of claims and indication of SEQ ID NO: 5 as the elected "species", which it was not. The Group and rejoinder of claims (other groups) remain drawn to SEQ ID NOS: 5 and 8-10, as the invention (not species), even though presently amended claims 7-14 have not been so amended, nor are SEQ ID NOS: 8-10 even included in certain claim groupings. Based on the election, the current claim set remains quite confusing, being drawn to numerous peptides not grouped or elected.

Group XIX, SEQ ID NOS: 5 and 8-10, was and remains the elected group. The previous examiner then rejoined claims 1 and 2, drawn to a pharmaceutical composition and method of making, a peptide selected from the group consisting of SEQ ID NOS: 5 and 8-10. Claims 7 (pharmaceutical composition comprising at least two peptides selected from the group consisting SEQ ID NOS: 5 and 8-10), and claims 9-12 (a food product composition comprising at least two peptides selected from the group consisting), are examined on the merits as Drawn to SEQ ID NOS: 5 and 8-10. Claims 8 and 13-14 are withdrawn from consideration, as depending from cancelled claims.

***Claim Objections***

Claims 7 and 9-12 are objected to because of the following informalities:

The claims have not been amended commensurate in scope with the elected invention. Namely, SEQ ID NOS: 5 and 8-10. Other non-elected SEQ ID NOS: remain therein. Were the claims so amended, they would likely receive favorable consideration.

The prior art of record was not found to reasonably teach or suggest the combination of any two or more of SEQ ID NOS: 5 and 8-10. Individually only, Garault et al., 2002 (J. Biol. Chem. 277(1): 32-39), is deemed the closest prior art of record. Garault et al. teach the present peptide sequence of SEQ ID NO: 5, FALPQYLK, of casein-alpha-s2, in Table II, page 36. As well as present peptide sequence of SEQ ID NO: 8, ALNEINQFYQK, of casein-alpha-s2, also in Table II, page 36. [The previous Examiner also indicated SEQ ID NO: 9, ALNEINQFY, was taught therein, but this fragment of SEQ ID NO: 8 was not found by the present Examiner therein. However, Garault et al. does not teach or suggest the combination of presently claimed SEQ ID NO: 5 and 8, or any other combination.

Appropriate correction is required.

***Claim Rejections - 35 USC § 112 1<sup>st</sup> Scope of Enablement***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 7 and 9-12 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for a food product comprising a combination of two or more of SEQ ID NOS: 5 and 8-10, does not reasonably provide enablement as a combination food product for ACE inhibition or a pharmaceutical composition for treating hypertension. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make or use the invention commensurate in scope with these claims.

The rejection of claims under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement, is maintained for the reasons of record, based on #1 below, as fully described in the earlier action by the previous Examiner, but now applying equally to SEQ ID NOS: 8-10. The former Examiner's 4-page detailed explanation as to why the elected SEQ ID NO: 5 is enabled as a food product, but not enabled for e.g. treating hypertension, or even clearly established for its underlying pathway of ACE inhibition.

Thus, the rejection of the claims as lacking enablement for the following reasons is maintained:

1. None of elected SEQ ID NOS: 5 or 8-10 has been established as capable of treating hypertension (e.g. claim 11), nor one of its underlying pathways - as capable of inhibiting ACE (e.g. claims 7 and 9-10, 12).

### ***Conclusion***

No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MAURY AUDET whose telephone number is (571)272-0960. The examiner can normally be reached on M-Th. 7AM-5:30PM (10 Hrs.).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cecilia Tsang can be reached on 571-272-0562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MA, 7/21/2007

/Maury Audet/  
Examiner, Art Unit 1654